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THE FACEBOOK, INC. and MARK ZUCKERBERG

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

THE FACEBOOK, INC. and MARK ZUCKERBERG,

Plaintiffs,

v.

CONNECTU, INC. (formerly known as CONNECTU, LLC), PACIFIC NORTHWEST SOFTWARE, INC., WINSTON WILLIAMS, WAYNE CHANG, and DAVID GUCWA,

Defendants.

Case No. 5:07-CV-01389-RS

DECLARATION OF THERESA A. SUTTON IN SUPPORT OF PLAINTIFFS' RESPONSE TO FINNEGAN'S MOTION TO WITHDRAW AS COUNSEL FOR WINSTON WILLIAMS

Date: January 23, 2008
Time: 9:30 A.M.
Judge: Honorable Richard Seeborg

Dockets.Justia.com

I, Theresa A. Sutton, declare as follows:

1. I am an associate at the law firm of Orrick, Herrington & Sutcliffe, counsel for Plaintiffs Facebook, Inc. and Mark Zuckerberg in this action, and a member of the Bar of the state of California. I make this declaration in support of Plaintiffs' Response to Finnegan's Motion to Withdraw as Counsel for Defendant Winston Williams. I make this declaration of my own personal knowledge and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

2. Attached hereto as **Exhibit A** is a true and correct copy of Facebook's First Set of Interrogatories related to jurisdiction dated May 24, 2007.

3. Attached hereto as **Exhibit B** is a true and correct copy of Facebook's First Set of Interrogatories served on November 7, 2007, to Winston Williams, PNS, Wayne Chang, and Pacific Northwest Software. This set of interrogatories seeks identification of the user accounts and passwords used by the defendants to access the Facebook website, as well as the number of emails sent to invite Facebook users to join ConnectU.

4. On December 5, 2007, a month after Williams purportedly disappeared, Scott Mosko, Finnegan, Henderson, Farabow, Garrett & Dunner, requested a 30-day extension of time for all defendants to respond to this set of interrogatories. Attached hereto as **Exhibit C** is a true and correct copy of this December 5, 2007, email.

5. Plaintiffs offered to condition the month-long extension on Defendants' promise to provide full and complete responses. Attached hereto as **Exhibit D** is a true and correct copy of this December 6, 2007, email.

6. On December 10, 2007, 35 days after Williams' alleged disappearance, Finnegan served on behalf of all Defendants, *including Williams*, responses to this set of interrogatories. Attached hereto as **Exhibit E** is a true and correct copy of Williams' response to the November 7, 2007 interrogatories. All defendants served substantively identical responses.

7. On November 21, 2007, Plaintiffs served a set of Requests for Production of Documents on each of Williams and PNS. Attached hereto as **Exhibit F** is a true and correct copy of Plaintiffs' First Set of Requests for Production of Documents.

8. Attached hereto as **Exhibit G** is a true and correct copy of Williams' December 26, 2007, Responses to Plaintiffs' First Set of Requests for Production of Documents.

9. On December 14, 2007, Mr. Mosko notified Plaintiffs for the first time of Finnegan's inability to communicate with Williams. Attached hereto as **Exhibit H** is a true and correct copy of Mr. Mosko's letter to me on this subject.

10. Attached hereto as **Exhibit I** is a true and correct copy of Pacific Northwest Software's responses to Facebook's jurisdictional interrogatories.

11. Attached hereto as **Exhibit J** is a true and correct copy of documents produced by Defendant David Gucwa.

12. Attached hereto as **Exhibit K** is a true and correct copy of documents produced by Defendant Pacific Northwest Software. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

13. Attached hereto as **Exhibit L-1** is a true and correct copy of relevant excerpts of ConnectU's January 16, 2006, 30(b)(6) deposition. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

14. Attached hereto as **Exhibit L-2** is a true and correct copy of page 109 of ConnectU's January 16, 2006, 30(b)(6) deposition. This page has been de-designated by Finnegan. Plaintiffs include this page also as part of Exhibit L-1 for the Court's convenience in reviewing the file.

15. Attached hereto as **Exhibit M-1** is a true and correct copy of relevant excerpts of Pacific Northwest Software's January 29, 2007, 30(b)(6) deposition. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

16. Attached hereto as **Exhibit M-2** is a true and correct copy of pages 61-62, and 89 of Pacific Northwest Software's January 29, 2007, 30(b)(6) deposition. These pages have been de-designated by Finnegan. Plaintiffs include these pages also as part of Exhibit M-1 for the Court's convenience in reviewing the file.

17. Attached hereto as **Exhibit N** is a true and correct copy of ConnectU's April 3, 2006, Amended Response to Form Interrogatories.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 2nd day of January 2008 at Menlo Park, California.

/s/ Theresa A. Sutton /s/

Theresa A. Sutton

CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on January 2, 2008.

Dated: January 2, 2008

Respectfully submitted,

/s/ Theresa A. Sutton /s/

Name of Attorney